

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE: NEW ENGLAND COMPOUNDING
PHARMACY, INC. PRODUCTS LIABILITY
LITIGATION

THIS DOCUMENT RELATES TO:
All Actions

MDL No. 2419
Master Docket No.: 1:13-md-2419-RWZ

Honorable Rya W. Zobel

**PLAINTIFFS' STEERING COMMITTEE'S RESPONSE TO TENNESSEE CLINIC
DEFENDANTS' NOTICE OF AUTOMATIC TEN-DAY EXTENSION TO FILE
RESPONSE TO PSC MOTION AT DKT. 1716**

The Plaintiffs' Steering Committee ("PSC") responds to the Tennessee Clinic Defendants' Notice of Automatic Ten-Day Extension To File Response To PSC Motion At Dkt. 1716 (Dkt. No. 1736, the "Notice").¹ The Tennessee Clinic Defendants claim that they have an automatic ten-day extension to file a response to the PSC's Motion for Expedited Trial (Dkt. No 1716, the "Motion to Expedite").

The PSC has a simple goal: present the Court with a fully briefed motion for expedited trial (which proposes a trial by year end) so that the Court may consider this matter at the March 25, 2015 status conference. The Court had previously indicated on at least two occasions its interest in trying cases in this MDL by the close of the year.²

Ordinarily, the PSC does not object to reasonable first requests for an extension to respond to a motion or other matter. However, any extension of the current briefing schedule on the Motion to Expedite would potentially push this Court's consideration of the motion until at least the April state conference and thereby jeopardizing the goal of a trial

¹ The Saint Thomas Entities filed a similar notice and this response is equally applicable to that notice. Dkt. No. 1739.

² See Dkt. No. 1717 at 9-10, citing relevant transcripts of discussion

this calendar year. As a result, the PSC must oppose the request and the PSC intends to ask the Court to mark up this motion for oral argument during next week's status conference.³

The Tennessee Clinic Defendants rely upon MDL Order No. 11 (Dkt. No. 1524, the "Standing Order") for their claim to an automatic extension, but the Tennessee Clinic Defendants cannot take shelter in this Standing Order. In relevant part, the Standing Order states: "[i]f the Impacted Parties do not agree to the extension sought, but the requested extension is ten days or less and this is the first request for an extension, the extension will be granted by way of this Standing Order..."⁴

Here, the Tennessee Clinic Defendants requested an extension through April 6, 2015 to respond to the Motion to Expedite, which would constitute a 17 day extension on their response to the Motion to Expedite.⁵ In other words, the Tennessee Clinic Defendants did not request an extension of "ten days or less" as stated in the Standing Order. Therefore, the Tennessee Clinic Defendants are not entitled to the automatic 10 day extension they now seek.⁶

Notwithstanding this deficiency, the Tennessee Clinic Defendants have clearly put a lot of thought into the PSC's Motion to Expedite and could easily brief the issue within the standard 14 day response time.⁷ With their Notice, the Tennessee Clinic Defendants filed a detailed letter outlining their objections to the Motion to Expedite, and this letter could

³ The PSC recognizes that the Tennessee Clinic Defendants have questions relating to the Motion to Expedite as indicated in the lengthy letter that they attach to the Notice. Dkt. No. 1736-1. The PSC will continue to discuss those questions with Saint Thomas between now and the hearing.

⁴ Dkt. No. 1524 at P. 2.

⁵ Dkt. No. 1736-1 at P. 1, requesting an extension to April 6, 2016 to file a response to the Motion to Expedite which is due in the ordinary course on March 20, 2015.

⁶ The PSC acknowledges that the Tennessee Clinic Defendants are now only seeking a 10 day extension per the Standing Order and not an extension through April 6 as stated in their original request to the PSC.

⁷ See Dkt. No. 1736-1, outlining in great detail the Tennessee Clinic Defendants objections to the Motion to Expedite.

easily be turned into an opposition to the Motion to Expedite.⁸ The Tennessee Clinic Defendants offer no real or substantive reason why they could not satisfactorily brief this issue within the standard 14 day window. The filing of the Motion to Expedite could not catch the Tennessee Clinic Defendants by surprise, because the PSC discussed such a filing at both the January and February 2015 status conferences.⁹

The Tennessee Clinic Defendants are attempting to create the appearance that the Motion to Expedite is not fully briefed and ripe for argument at the upcoming March status conference. In actuality, with the letter submitted with the Notice of Extension, the matter is fully briefed and ready for oral argument.

Accordingly, the PSC will be prepared to argue the merits of the Motion to Expedite at the upcoming March 25, 2015 status conference.

March 20, 2015

Respectfully submitted,

/s/ J. Gerard Stranch, IV

J. Gerard Stranch, IV

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⁸ *Id.*

⁹ See Dkt. No. 1717 at 9-10, citing relevant transcripts of discussion

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Plaintiffs' Steering Committee

CERTIFICATE OF SERVICE

I, J. Gerard Stranch, IV, hereby certify that I caused a copy of the foregoing to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's system, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system.

Dated: March 20, 2015

/s/ J. Gerard Stranch, IV

J. Gerard Stranch, IV